

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID TYO and BARBARA TYO,  
Plaintiffs-Appellants,

UNPUBLISHED  
August 16, 2002

v

RICHARD LORENZ and JULIA LORENZ,  
Defendants-Appellees.

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No. 230686  
Iosco Circuit Court  
LC No. 00-002475-NO

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

In this negligence action, plaintiffs David and Barbara Tyo appeal as of right from a grant of summary disposition in favor of defendants Richard and Julia Lorenz. We affirm.

On December 28, 1999, plaintiff David Tyo (“Tyo”) went to defendants’ home because defendants were to baby-sit plaintiffs’ children. When Tyo arrived, he parked his van behind defendants’ van in the driveway. Tyo took one of his children out of the van from the right passenger side. He then walked between the two vans to the edge of the driveway. Tyo stated that defendants’ van was nearly as wide as the driveway so that there was not sufficient room to walk up the driveway to the sidewalk that connected to defendants’ front door. Therefore, Tyo decided to take the most direct route to the door which was across defendants’ front yard. Carrying his child and a diaper bag, Tyo began to walk across defendants’ yard. Tyo slipped on a patch of snow-covered ice and sustained serious injuries to his right leg.

Plaintiffs first argue that the trial court erred in granting summary disposition in favor of defendants because there existed genuine issues of material fact. We disagree. On appeal, a trial court's grant or denial of summary disposition will be reviewed de novo. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court must review the record in the same manner as must the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998).

Summary disposition of all or part of a claim or defense may be granted when

[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. [MCR 2.116(C)(10).]

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra* at 337. When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b); *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000).

The trial court determined that defendants did not owe a duty to plaintiffs. The existence of a duty owed by a defendant to the plaintiff is a necessary element in every negligence or premises liability case. *Papadimas v Mykonos Lounge*, 176 Mich App 40, 45; 436 NW2d 280 (1989). There can be no actionable negligence if there is no legal duty. *Etter v Michigan Bell Telephone Co*, 179 Mich App 551, 555; 446 NW2d 500 (1989). The question of duty is an issue of law for the court to decide. *Papadimas, supra* at 45. If there is no duty, summary disposition is proper. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). Determination of the existence of duty as a question of law is subject to de novo review on appeal. *Meek v Dep't of Transportation*, 240 Mich App 105, 110; 610 NW2d 250 (2000).

The duty which a landowner owes depends on the plaintiff's status at the time of injury. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). The parties do not contest the trial court's conclusion that Tyo was a licensee at the time he was injured. The duty to adult licensees is only to warn them of any hidden dangers about which the owner knows or has reason to know, if the licensee does not know or have reason to know of the dangers involved, and to refrain from wanton and willful misconduct.<sup>1</sup> *Burnett v Bruner*, 247 Mich App 365, 378; 636 NW2d 773 (2001). The owner owes no duty of inspection, nor any duty to prepare the premises for the safety of the licensee. *Id.*

Open and obvious dangers relieve a landowner from the duty to warn. *Altairi v Alhaj*, 235 Mich App 626, 639; 599 NW2d 537 (1999). In this case, freshly fallen snow covered the ice and could not be discovered upon casual inspection. Therefore, defendants were required to warn plaintiffs of the ice patch if they knew about it and if plaintiffs were not aware of it.

In regards to Tyo's knowledge, Tyo stated that he considered his options regarding what route to take to defendants' front door and decided to take the most direct route to the front door, which was across defendants' front lawn. Tyo admitted that he thought about the danger involved in crossing the yard, but believed because he had on work boots that had good traction, as long as he was careful, there would not be a problem. Although Tyo testified that he did not actually know there was ice under the snow, he knew that there could be. However, plaintiffs subsequently submitted an affidavit to the trial court in which Tyo stated that he did not have any reason to suspect that there would be ice under the snow.

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<sup>1</sup> This is the only duty which a landowner owes to a licensee. Defendants had no duty to ensure that a safe pathway to their front door existed. *Burnett, supra* at 374-375. Therefore, plaintiffs argument that their general negligence claim should survive summary disposition, even if its premises liability claim does not, has no merit.

In regards to defendants' knowledge, defendants denied knowing about any dangerous condition in their yard. Plaintiffs did not present any counter-evidence. Without any evidence indicating to the contrary, we conclude that defendants did not know nor did they have reason to know of the ice hidden beneath the snow in their front yard. As a result, we conclude that defendants had no duty to warn plaintiffs.

Plaintiffs contend that material factual disputes did exist. However, none of those which plaintiffs identified related to either plaintiffs' or defendants' knowledge of the ice patch. Therefore, we hold that no genuine issue of material fact existed as to defendants' lack of duty and summary disposition in favor of defendants was proper.

Plaintiffs next argue that summary disposition was inappropriate because discovery was incomplete. Again, we disagree. Summary disposition may be appropriate before discovery is completed if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23, lv den 463 Mich 942 (2000). If a party opposes a motion for summary disposition on the ground that discovery is incomplete, the party must at least assert that a dispute does exist and support that allegation by some independent evidence. *Id.* at 567.

A genuine issue of material fact regarding defendants' duty could only exist if (1) Tyo did not know or should not have known of the condition or (2) defendants knew or should have known of the condition. Plaintiffs did not contend below or on appeal that further discovery would support either of these points. Therefore, we hold that summary disposition was proper even though discovery was not completed.

Plaintiffs also argue that the trial court improperly granted summary disposition based on the natural accumulation doctrine. We agree.<sup>2</sup> The natural accumulation doctrine does not apply to the licensor-licensee context where the injury occurred on the possessor's private property. *Altairi, supra* at 638. However, as discussed above, summary disposition was proper based on common-law negligence principles. This Court will affirm the trial court when it reaches the correct result even if it does so under alternative reasoning. *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001).

Plaintiffs further argue that they should be allowed to amend their complaint. We disagree. Because plaintiffs failed to preserve this issue, it is reviewed for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). MCR 2.116(I)(5) states, in part, that if a motion for summary disposition is brought pursuant to MCR 2.116(C)(10), then "the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118." Plaintiffs did not file a motion to amend their complaint, and the record does not indicate that the trial court prevented plaintiffs from filing a motion. Therefore, there was no error. As a result,

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<sup>2</sup> Because we determined that the trial court should not have relied on the natural accumulation doctrine, plaintiffs' arguments relating to the doctrine's exceptions are moot.

plaintiffs have forfeited this issue. *Carines, supra*, 460 Mich at 736.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Henry William Saad  
/s/ Michael R. Smolenski